

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 1229 of 1997

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DEVJIBHAI ARJANBHAI KHENI

Versus

RAJESH SINGH AJIT SINGH ZALA  
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Appearance:

MR DIVYESH C SEJPAL for Petitioners  
SERVED for Respondent No. 1,2,3 & 5  
MR HARDIK C RAWAL for Respondent No. 4  
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CORAM : MR.JUSTICE J.M.PANCHAL

Date of Order: 29/09/97

ORAL ORDER

By means of filing this application under section 24 of the Code of Civil Procedure, 1908, the applicants have prayed to direct transfer of Motor Accident Claim Petition no.97/91 instituted before Motor Accident Claims Tribunal, Amreli, to Motor Accident Claims Tribunal, Bhavnagar.

Motor Accident Claim Petition no.97/91 is instituted by the applicants before Motor Accident Claims Tribunal, Amreli with reference to motor accident which took place on August 17,1991. The applicants have averred in the application that applicant no.1, who is father of the deceased, suffers from paralysis, whereas other members in the family are female and, therefore, the applicants find it difficult to attend claim proceedings at Amreli. It is averred by the applicants the applicants reside at village Pachhegaum, which is 150 K.Ms. away from Amreli and, therefore, not only the applicants find it inconvenient to attend the proceedings at Amreli, but they are required to incur unnecessary expenditure. What is highlighted in the application is that witnesses to the incident also belong to Bhavnagar district and it is difficult for them to come every now and then from their place of residence to Amreli. The applicants have referred to provisions of Section 166(2) of the Motor Vehicles Act,1988 as amended on November 14,1994 to stress that the claim petition can be filed before the Claims Tribunal within local limits of whose jurisdiction claimant resides or carries on business.

Under the circumstances, the applicants have filed present application and claimed relief to which reference is made earlier.

Though opponents nos.1,2,3 & 5 are duly served, they have neither remained present in person nor through learned advocate, nor any of them has controverted the averments made in the application. Though opponent no.4 is duly served and represented by learned advocate Mr.Hardik C.Raval, no affidavit-in-reply has been filed on his behalf controverting statements made in the application.

The fact that applicant no.1, who is father of the deceased, is suffering from paralysis and, therefore, finds it difficult to attend claim proceedings at Amreli, is not in dispute. The averment made in the application to the effect that distance between village Pachhegaum where the applicants reside and Amreli is 150 K.Ms. is not controverted by any of the opponents. Though the Motor Accident Claim Petition is instituted in 1991, it is not yet disposed of by the Tribunal and, therefore, there is no manner of doubt that the applicants must have suffered inconvenience and avoidable expenditure while attending claim proceedings at Amreli. The fact that witnesses to the incident belong to Bhavnagar is also not in dispute. The submission made by the learned Counsel for the opponent no.4 that this is one of the group matters instituted in the year 1991 and, therefore, transfer should not be ordered, cannot be accepted. Offices of opponents no.3 & 4 are also situated at Bhavnagar and, therefore, they are not likely to suffer any inconvenience if the claim petition is ordered to be transferred to Bhavnagar, whereas refusal of relief is bound to cause great inconvenience to the applicants. It is well settled that while deciding application under section 24 of the Code of Civil Procedure, 1908, Court should take into consideration convenience of the parties and witnesses as well as costs of litigation. On totality of the facts and circumstances obtaining in the case and looking at the overall view of the nature of the case and convenience of the parties, I am of the opinion that it would be just and reasonable to direct transfer of claim petition from Amreli to Bhavnagar. The application, therefore, deserves to be granted.

For the foregoing reasons, the application succeeds. Motor Accident Claim Petition no.97/91 pending before Motor Accident Claims Tribunal, Amreli is ordered to be transferred to Motor Accident Claims Tribunal, Bhavnagar. Rule is made absolute accordingly,

with no order as to costs.

September 29, 1997 (J.M.Panchal, J.)  
jsp.